

EXHIBIT 1

The Honorable Cindi Port

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

KEN HOFSCHULTE, et al.,

Plaintiffs,

v.

KING COUNTY FIRE CHIEFS
ASSOCIATION, et al.,

Defendants.

CASE NO. 21-2-14749-2 SEA

DECLARATION OF TIMOTHY DAY

I, TIMOTHY DAY, hereby declare as follows:

1. I am the Deputy Fire Chief, Operations, for the City of Kirkland ("the City") Fire Department. I am at least 18 years of age and am competent to testify as to the following based upon personal knowledge and records maintained by the City.

2. I have been Deputy Fire Chief at the City since 2017. Prior to that, I held the positions of deputy chief, battalion chief, captain, and firefighter at Valley Regional Fire Authority/City of Auburn. I started my career in firefighting in 1996 as a firefighter with the City of Auburn.

3. In February 2020, first responders and health officials detected what appeared to be an outbreak of flu-like symptoms in a number of patients living in a long-term care facility in Kirkland, Washington. City Fire Department personnel responded and took patients to a local hospital, where one of the patients died and testing revealed that several of those patients were

DECLARATION OF TIMOTHY DAY - 1

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1 positive for COVID-19. The City declared an emergency, as did Washington State and King
2 County. Between late February and early March, the City had between 17 and 31 Firefighters under
3 quarantine or isolation due to exposure to COVID-19.

4 4. The City participated in early meetings regarding how to proceed in the face of the
5 local outbreak of COVID-19, which included Dr. Jeffrey Duchin (Seattle and King County Public
6 Health Officer), Dr. Thomas Rea (Medical Director of the King County EMS), the President of the
7 International Association of Fire Fighters, City firefighters, and others. From that date forward, the
8 City worked with and looked to King County EMS to develop protocols for fire departments
9 providing emergency medical services during the pandemic.

10 5. All of Kirkland's Firefighters are required to maintain Emergency Medical
11 Technician (EMT) certification. Under current King County EMS guidelines, unvaccinated EMTs
12 who have COVID must self-quarantine for up to 14 days, while vaccinated EMTs who have
13 COVID need only quarantine if they have symptoms. Unvaccinated, asymptomatic employees who
14 have an exposure to someone with or suspected to have COVID-19 must quarantine for up to 14
15 days and are not allowed in the workplace. Their shifts are covered through overtime. Attached
16 hereto as Exhibit 1 is a true and correct copy of the most recent King County EMS Public Health
17 COVID 19-Exposure Guidelines.

18 6. During the pandemic, one of the benefits we provided to public safety personnel at
19 the City was paid Administrative Leave for COVID-related absences, including time spent in
20 quarantine, as well as the use of pandemic sick leave and pandemic shared leave. On July 15, 2021,
21 because vaccines were now available, the City ended the general use of paid Administrative Leave,
22 except as an accommodation for personnel who were unable to be vaccinated for religious or
23 medical reasons.

24 7. After August 9, 2021, when Governor Jay Inslee issued Proclamation 21-14
25 ("Vaccine Proclamation", *see* Declaration of Joseph Sanford, Ex. 1), I worked with Chief Joe
26 Sanford and others in management at the City and Fire Department to determine how to implement

1 the requirements of the Vaccine Proclamation in the Kirkland Fire Department. For example, I
2 participated in the development of a City procedure and forms with respect to vaccination timelines,
3 proof of vaccination, and exemption requests. The Department ultimately had 18 requests for
4 religious exemptions from Firefighter/EMTs.

5 8. As part of the Fire Department's leadership team, I was involved in evaluating
6 potential accommodations we might provide to enable unvaccinated Firefighter/EMTs to continue
7 providing patient care. Accommodations we considered included requiring wearing of N95 masks
8 at all times, COVID-19 quick tests at the start of every shift, assignment to a single station or a
9 different shift, daily symptom monitoring, and re-evaluation of any protocol every two weeks. In
10 early September 2021, we shared these possible accommodations with the representatives of the
11 union representing the City's Firefighter/EMTs. *See* the Declaration of James Lopez Exhibit __ for
12 a true and correct copy of his September 3, 2021 email re: "Medical and Religious
13 Accommodations".

14 9. I also participated in negotiations with the Firefighter/EMTs' union, Kirkland
15 Professional Firefighters, International Association of Fire Fighters, Local No. 2545 ("IAFF")
16 regarding the impacts of the Governor's Vaccination Mandate. As part of those negotiations, we
17 communicated to the Union representatives:

18 Earlier we indicated that granted accommodations would be
19 reevaluated by the City at least every two weeks or more frequently to
20 ensure they meet evolving safety standards, operational needs, and
21 other considerations. We now intend to evaluate once a month or
22 more frequently if necessary. Modifications will be made, as needed.
23 As you know, vaccine mandates and operational needs are dynamic
24 and additional changes may be necessary. The City will notify the
25 IAFF regarding any changes that impact mandatory subjects of
26 bargaining.

Also, if an individual is granted an accommodation, it is expected that
the requirements of the accommodation (including any later revisions)
will remain only as long as required by law and absent any other
applicable safety requirements.

1 *Id. at Sept. 17, 2021 email reply.*

2 10. When the City made the decision that it could not accommodate its unvaccinated
3 Firefighter/EMTs by allowing them to continue providing patient care, I evaluated the impact to
4 staffing on each duty shift that showed the number of personnel that remained on each shift less the
5 unvaccinated Firefighter/EMTs who would be working day shifts as part of their accommodations
6 Attached as Exhibit 2 is a true and correct copy the spreadsheet that showed this impact and that I
7 used for planning purposes. I developed this spreadsheet on or around October 12, 2021.

8 11. I also was responsible for identifying alternative duties for unvaccinated
9 Firefighter/EMTs to perform while working a 40-hour schedule as an accommodation for their
10 religious beliefs with respect to the COVID-19 vaccination requirement. The duties assigned to
11 unvaccinated employees as part of their accommodations included data entry, PPE repair and
12 inventory, developing curriculum and training materials, maintaining tools, and conducting
13 inspections. Attached as Exhibit 3 is a true and correct copy of a November 3 update of weekly
14 assigned accommodation activities. The City was able to accommodation all 18 Firefighter/EMTs
15 who requested exemptions from the vaccination requirement. Attached as Exhibit 4 is a true and
16 correct copy of accommodation assignments for all unvaccinated Firefighter/EMTs as of October
17 12, 2021. All Firefighter/EMTs who sought exemptions from the vaccine requirement on religious
18 grounds were granted an exemption and accommodated in alternative assignments through
19 December 31, 2021 (although some also immediately began the process of becoming vaccinated).

20 12. As part of the accommodations process, I assisted in the development of “reasonable
21 accommodation agreement” forms for use with respect to any accommodations that were approved
22 for a Firefighter/EMT. The forms advised each Firefighter/EMT of the following with respect to
23 timeframe of the accommodation:

24 The accommodations described below are considered the most
25 effective at this time, given your essential job functions and the City’s
26 operational necessities and risk tolerance. It is understood that this is
a temporary arrangement created to assist the employee while the

1 State's vaccine mandate is in effect; this is not a permanent position
2 or change of duties or responsibilities.

3 Any extension of this agreement beyond the timeframe stated will be
4 decided on a case-by-case basis and will be dependent upon the needs
5 of the department and may involve negotiations with the International
6 Association of Firefighters Local No. 2545 regarding leave accruals
7 and conversions.

8 Attached as Exhibit 5 is a true and correct copy of a Reasonable Accommodation Agreement for
9 Firefighter Erik Gustafson.

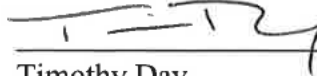
10 13. After we provided initial accommodations to exempt Firefighter/EMTs, we
11 continued to work with individual employees to adjust accommodations in response to their input.
12 For example, Firefighter/EMT Jesse Disch asked to be able to flex his time so that he would be able
13 to repair fire academy gear on the weekends. We determined that the requested change was helpful
14 and operationally necessary, such that we were able to accommodate it. Attached as Exhibit 6 is a
15 true and correct copy of the Reasonable Accommodation Agreement for Firefighter/EMT Jesse
16 Disch that reflects this revision.

17 14. As of October 18, 2021, the effective date of the Governor's Vaccination Mandate,
18 we no longer allowed unvaccinated Firefighter/EMTs to work on shifts, as that would require them
19 to co-mingle and sleep in proximity with other Firefighter/EMTs in stations. We authorized the use
20 of paid administrative leave during the transition to 40-hour workweeks if needed for individual
21 firefighters.

22 15. As of December 27, 2021, eleven firefighters with accommodations remain assigned
23 to a 40-hour schedule, and one firefighter with accommodations and who normally works a 40-hour
24 remains assigned to his normal duties. Of the eleven accommodated firefighters, four are on
25 disability leave/FMLA after being injured on-the-job and one firefighter has submitted his intent to
26 retire in January.

1 I declare under penalty of perjury under all applicable law that, to the best of my knowledge,
2 information and belief, the foregoing is true and correct.

3 EXECUTED this 30 day of December, 2021, at Kirkland, Washington.

4 

5 Timothy Day

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorney(s) Name & Address	Party(ies) Represented	Method of Service
Tracy Tribbett Pacific Justice Institute 6404 Three Rivers Drive Pasco, WA 99301 ttribbett@pji.org	Plaintiffs	✓ Electronic Mail ✓ King County E-Service
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Amanda Butler Paul J. Treisch Keating, Bucklin & McCormack, Inc. 801 Second Ave., Suite 1210 Seattle, WA 98104 abutler@kbmlawyers.com ptriesch@kbmlawyers.com	Defendants Puget Sound Regional Fire Authority, Districts #37 and #43; Chief Randy Fehr and Enumclaw Fire Dept.; Chief Matt Cowan and Shoreline Fire Dept.; King County Fire Dist. #4	✓ Electronic Mail ✓ King County E-Service
Lori M. Bemis McGavick Graves 1102 Broadway, Suite 500 Tacoma, WA 98402 lmb@mcbgavick.com	Defendant Chief Matt Morris and Puget Sound Regional Fire Authority, Districts #37 and #43	✓ Electronic Mail ✓ King County E-Service
Denise Ashbaugh Jonah O. Harrison Arete Law Group 1218 3rd Ave., Suite 2100 Seattle, WA 98101 dashbaugh@aretelaw.com jharrison@aretelaw.com	Defendants Chief Jay Hagen and Bellevue Fire Dept.; City of Bellevue	✓ Electronic Mail ✓ King County E-Service

DECLARATION OF TIMOTHY DAY - 7

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Joseph F. Quinn (general counsel) Quinn and Quinn, P.S. 10222 Bujacich Road Gig Harbor, WA 98332 joequinn@firehouselawyer.com	Defendants Chief Michael Marrs and King County Fire Dist. #2; Chief Brad Thompson and Valley Regional Fire Authority; Chief Vic Pennington and South King Fire Dist. #39; Chief Charles Krimmert and Fire Dist. #13	✓ Electronic Mail ✓ King County E-Service
Michael B. McDermott Johnson, Graffe, Keay, Moniz & Wick, LLP 925 Fourth Ave., Ste. 2300 Seattle, WA 98104 Mcdermottm@jgkmw.com	Defendant Thomas Rea, MD	✓ Electronic Mail ✓ King County E-Service

DATED this 3rd day of January, 2022.

s/

, Legal Assistant

DECLARATION OF TIMOTHY DAY - 9

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